# United States Circuit Court of

FOR THE [illegible]

UNITED STATES OF AMERICA, [illegible]

Appellant,

PEARLIE LAWSON, [illegible]
ESTATE OF [illegible]
AND JOHN A. [illegible]
THE ESTATE OF [illegible]
Respondents,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE
STATES FOR THE EASTERN DISTRICT OF

TRANSCRIPT OF RECORD.

Transcript Filed

Jurisdiction of
The Court
Nature of the
Appellees
Statutes Involved
Statement of the

Bradley Hess,
Louisville, Kentucky,
Attorney for Appellees.

FILED

DEC 30 1939

JOHN W. MENZI

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No.....

# United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

UNITED STATES OF AMERICA, APPELLANT,

VERSUS

PEARLIE LAWSON, ADMINISTRATRIX OF THE ESTATE OF HOBART LAWSON, DECEASED, AND JOHN A. POLIN, ADMINISTRATOR OF THE ESTATE OF HENRY LAWSON, BENEFICIARY, DECEASED, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY.

## TRANSCRIPT OF RECORD.

In the District Court of the United States for the Eastern District of Kentucky.

Pearlie Lawson, Administratrix of the Estate of Hobart Lawson, and Henry Lawson, Beneficiary, Plaintiffs,

vs.

United States of America, Defendant.
# U. S. 140.

**PETITION**—Filed Mar. 30, 1932.

The plaintiff, Pearlie Lawson, says that she is a citizen residing in Harrodsburg, Mercer County, in the Eastern District of Kentucky; and has so resided in

the Eastern District of Kentucky for more than two years last passed; that on October 5, 1924, Hobart Lawson, died, intestate, a citizen and resident of Harrodsburg, Mercer County, in the Eastern District of Kentucky, where he had resided for more than two years prior to his death; and that thereafter, to-wit: on the.....day of....., 19.. this plaintiff, Pearlie Lawson, was by order of the Mercer County Court duly and regularly appointed as administratrix of the estate of Hobart Lawson and duly qualified as such, and is now the duly appointed, qualified and acting administratrix of said estate;

The plaintiff, Henry Lawson, states that he is a citizen and resident of Mercer County, in the Eastern District of Kentucky; that he is the father of the deceased soldier and the beneficiary of the insurance issued to said soldier Hobart Lawson by the United States Government;

Plaintiff further states that Hobart Lawson enlisted in the United States Army on the 9th day of May, 1917, at Fort Thomas, Ky., and that he served therein during the period of the World War until the 1st day of May, 1919, at which time he was discharged honorably therefrom.

Plaintiffs state that after said Hobart Lawson's entry into the Army of the United States, he made application for and was granted insurance in the amount of $10,000.00, effective as of February 2nd, 1918, and that certificate No. 2,228,154 was issued to him in compliance with said application and contract of insurance and the War Risk Insurance Act of Oct. 6, 1917, and that the soldier Hobart Lawson, and the beneficiary designated by said contract of insurance became entitled to the benefits of said Act and that the plaintiffs' decedent, Hobart Lawson, paid the monthly premiums on all of said insurance as prescribed by the Bureau of War Risk Insurance up to and including May 1st, 1919, and that said insurance remained in effect until May 1st, 1919, and for a period of thirty one days thereafter. Plaintiffs file herewith said certificate of insurance No. 2,228,154, issued by the Bureau, as Exhibit "A".

Plaintiffs state that prior to the discharge of said Hobart Lawson, on May 1, 1919, and while his policy was in force, to-wit: On June 24th, 1918, said Hobart Lawson was wounded through the shoulder, and contracted a disease and disability diagnosed as chronic pulmonary tuberculosis, that said wounds, disease and disability have continuously since his discharge May 1st, 1919, until his death from said wounds, disease and disability on October 5th, 1924, rendered him wholly unable to follow continuously, or at all, any substantially gainful occupation; that said disease and disability and wounds were the direct cause of his death, and plaintiffs state that at all times since the discharge of said Hobart Lawson until his death, he was totally and permanently disabled by reason of and as a direct result from said diseases, disabilities and wounds as above set out.

Plaintiff, Pearlie Lawson, Administratrix, states that under the provisions of said War Risk Insurance Act of Oct. 6, 1917, and the World War Veteran's Act of June 7, 1924, and the Acts Amendatory thereto, she is entitled to the payment of $57.50 per month for each and every month transpiring since May 1, 1919, until October 5, 1924; amounting in the aggregate to $.....

The plaintiff, Henry Lawson, says that under said Acts as mentioned above, he, as beneficiary is entitled to the payment of $57.50 per month for each and every month transpiring since October 5, 1924, until rendition of judgment in this action, and will be entitled to said amount per month for each and every month until May 1st, 1939, or until his death, whichever is the earlier date.

Plaintiffs further state that they have made application to the Veteran's Bureau and the Government Agencies which have preceded said Bureau for a rating of permanent and total disability of said Hobart Lawson and for the payment of permanent and total disability benefits from the date of his discharge from the United States Army; that said U. S. Veteran's Bureau and the Director thereof, and the Administrator of Veterans' Affairs, have refused to pay plaintiffs' said insurance for each and every month since decedent's

discharge and have disputed plaintiffs' claim to said insurance for that period, and that a disagreement now exists between the United States Veteran's Bureau and the plaintiffs concerning their right to the payment of $57.50 per month since May 1, 1919.

WHEREFORE, the plaintiff Pearlie Lawson, Administratrix of the estate of Hobart Lawson, prays that the Court adjudge that the War Risk Insurance issued to Hobart Lawson had matured on or before May 1st, 1919, and that said Hobart Lawson's total permanent disability had continued at all times since May 1st, 1919, until his death October 5, 1924, and that she recover judgment against the defendant for $57.50, for each and every month transpiring between May 1, 1919 and Oct. 5, 1924, and for all proper relief, and that her attorney herein be allowed a reasonable fee; The plaintiff, Henry Lawson, prays the Court adjudge that the War Risk Insurance issued to Hobart Lawson had matured on or before May 1st, 1919 and that said Hobart Lawson's total permanent disability had continued at all times since May 1, 191— until his death October 5, 1924, and that he recover judgment against defendant for $57.50 for each and every month from and after October 5, 1924, until rendition of judgment in this action, and until May 1st, 1939, or to the date of his death, whichever is the earlier date; and for all proper relief, and that his attorney herein be allowed a reasonable fee.

BACON R. MOORE,
Attorney for Plaintiffs.

The affiant Henry Lawson says that he is one of the plaintiffs in this action and has read the statements of the petition, and they are true to the best of his knowledge and belief.

Witness:
Thomas Lawson, Harrodsburg, Ky.
Lillie Lawson, Harrodsburg, Ky.

His
HENRY X LAWSON.
Mark

Subscribed and sworn to before me by said affiant, this 29 of March, 1932.

EULA C. MOORE,
N. P. M. C.

(SEAL)

My commission expires Oct. 6, 1932.

**ANSWER OF UNITED STATES OF AMERICA**—Filed August 31, 1933.

Comes the defendant, United States of America, for answer to plaintiffs' petition herein, and states that it does not have knowledge or information sufficient to form a belief, and therefore denies that the plaintiff, Pearlie Lawson is a citizen residing at Harrodsburg, Mercer County, Kentucky, in the Eastern District of Kentucky, or has so resided in the Eastern District of Kentucky, for more than two years last passed; denies that Hobart Lawson, deceased, was a citizen or resident of Harrodsburg, Mercer County, Kentucky, in the Eastern District of Kentucky, or that he resided there for more than two years prior to his death, or that thereafter, to-wit: on the ..... day of ....., 19.., this plaintiff, Pearlie Lawson, was by order of the Mercer County Court duly or regularly appointed as administratrix of the estate of Hobart Lawson or duly qualified as such or is now the duly appointed, qualified or acting administratrix of said estate.

II.

Defendant states that it does not have knowledge or information sufficient to form a belief and therefore

denies that the plaintiff, Henry Lawson, is a citizen or resident of Harrodsburg, Mercer County, Kentucky, in the Eastern District of Kentucky, or that he is the father of the deceased soldier.

III.

Defendant admits all the allegations in unnumbered paragraph Three of plaintiffs' petition.

IV.

Defendant denies that the soldier, Hobart Lawson, or the beneficiary designated by said contract of insurance became entitled to the benefits of said Act or that the plaintiff's decedent, Hobart Lawson, paid the monthly premiums on all of said insurance as prescribed by the Bureau of War Risk Insurance up to or including May 1, 1919, or that said insurance remained in effect until May 1, 1919, or for a period of thirty-one days thereafter.

V.

Defendant denies that prior to the discharge of said Hobart Lawson or on May 1, 1919, or while his policy was in force, to-wit: June 24, 1918, or at any time, the said Hobart Lawson was wounded through the shoulder or contracted a disease or disability diagnosed as chronic pulmonary tuberculosis, or that said wounds, disease or disability, if any, have continuously or at all, since his discharge May 1, 1919, or at any time, until his death from said wounds, disease or disability, if any, on October 5, 1924, rendered him wholly or at all unable to follow continuously or at all any substantially gainful occupation, or any occupation; denies that said disease or disability or wounds, if any, were the direct cause of his death, or that at all times or any time since the discharge of said Hobart Lawson until his death, or at any time, he was totally or permanently or at all disabled by reason of or as a direct result from said diseases, or disabilities or wounds, if any, as above set out.

VI.

Defendant denies that under the provisions of said War Risk Insurance Act of October 6, 1917, or the World War Veterans Act of June 7, 1924, or the Acts amendatory thereto, she is entitled to the payment of $57.50 per month or any sum per month, for each, or every or any month transpiring since May 1, 1919, until October 5, 1924, amounting to the aggregate sum of $.....

VII.

Defendant denies that under said Acts mentioned above, the plaintiff, Henry Lawson, is entitled as beneficiary, to the payment of $57.50 or any sum per month, for each or every or any month transpiring since the 5th day of October, 1924, until the rendition of judgment in this action, or will be entitled to said amount per month for each or every or any month until May 1, 1939, or until his death, whichever is the earlier date.

VIII.

Defendant admits all the allegations in unnumbered paragraph Eight of plaintiffs' petition.

WHEREFORE, having answered, defendant prays that plaintiffs' petition be dismissed; that they take naught thereby; for its costs herein expended, and for all proper relief.

(Signed) SAWYER A. SMITH,
United States Attorney.

The affiant, Sawyer A. Smith, says that he is the United States Attorney within and for the Eastern District of Kentucky; that the statements contained in the foregoing answer are true, with the exception of those of which there was not sufficient knowledge or information to form a belief, but he states that he believes the latter to be true.

(Signed) SAWYER A. SMITH.

Subscribed and sworn to before me by Sawyer A. Smith, this 31st day of August, 1933.

S. W. STACEY,
Clerk, E. Dist. of Ky.

By FLORENCE DUNHAM, D. C.

(SEAL)

Filed August 31st, 1933.

**AMENDED PETITION**—Filed July 13, 1934.
S. W. Stacey, Clerk.

Come the plaintiffs, Pearlie Lawson, Administratrix of the estate of Hobart Lawson, and Henry Lawson, beneficiary of Hobart Lawson, and amend their original petition herein, and for amendment state:

They re-affirm, the allegations of the original petition filed herein, except as may be inconsistent with facts set forth herein.

Plaintiffs state that Sections 19 World War Veterans Act as amended July 3, 1930, among other things, provides:

> "No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made, or within one year after the date of approval of this amendatory act, whichever is the later date, * * * PROVIDED, FURTHER, that this limitation is suspended for the period elapsing between the filing in the Bureau of the claim sued upon, and the denial of said claim by the Director."

Plaintiffs state that in conformity with said Act, to-wit: on or about June 5, 1931, as beneficiary of Hobart Lawson's Insurance Policy, the plaintiff Henry Lawson executed form No. 579 in duplicate, and mailed them to the Director of the United States Veterans' Bureau Washington, D. C., demanding insurance benefits, which date was twenty-eight days prior to July 3rd, 1931; that on or about March 18, 1932, said plaintiff received a letter through United States mail, dated March 15, 1932, denying his insurance benefits, the third paragraph of which letter is as follows:

> "If you accept the denial of the claim by the counsel as final, the suspension of the statute of limitation, provided by Section 19 shall cease from and after the date of this letter, plus the number of days usually required by the Post Office Department for the transmission of mail from Washington, D. C. to your last address of record."

Said letter was signed: "By direction, H. L. McCoy, Director of Insurance."

Plaintiffs state that the usual number of days required by the Post Office Department for the transmission of mail from Washington, D. C. to plaintiff's address is three to four days; That demand was mailed June 5, 1931, which is twenty-eight days prior to July 3, 1931. Plaintiff was entitled to the number of days between the time his demand was received by the Veterans Bureau and July 3, 1931, plus the number of days usually required to transmit mail from the Veterans Administration, Washington, D. C., to plaintiff's address: Rose Hill, Route 1, Kentucky,—these days to count from and after March 15, 1932, date of letter transmitting denial. Plaintiff's suit was filed on March 30, 1932, which brings the filing of the petition within the time allowed by Section 19 of World War Veterans' Act, as Amended July 3, 1930.

WHEREFORE, plaintiffs pray as in their original petition, &c.

BACON R. MOORE,
Attorney for Plaintiffs.

**ORDER**—Entered and filed Jan. 11, 1937.

Came the defendant, United States of America, by its attorney, and produced and filed herein answer to amended petition, and the filing of same is now noted of record.

H. Church Ford,
Judge.

**ANSWER TO AMENDED PETITION**—Filed Jan. 11, 1937.

Now comes the defendant, United States of America, by its attorney, and for answer to so much of plaintiffs' amended petition herein as it deems necessary and proper to answer, admits that Section 19 of the World War Veterans' Act, as amended July 3, 1930, is as quoted in plaintiffs' petition, but denies that in conformity with said Act, on or about June 5, 1931, as beneficiary of Hobart Lawson's insurance policy, the plaintiff, Henry Lawson, executed Form No. 579 in

duplicate, or at all, and mailed same to the Director of the United States Veterans Bureau at Washington, D. C., demanding insurance benefits, which date was twenty-eight days prior to July 3, 1931; defendant states that it has no sufficient knowledge or information to form a belief, and therefore denies that on or about the 18th day of March, 1932, plaintiff received a letter, through the United States mail, dated March 15, 1932, denying his insurance benefits, the third paragraph of which letter is as follows:

> "If you accept the denial of the claim by the council as final, the suspension of the statute of limitation, provided by Section 19 shall cease from and after the date of this letter, plus the number of days usually required by the Post Office Department for the transmission of mail from Washington, D. C. to your last address of record."

Said letter was signed by H. L. McCoy, Director of Insurance. Defendant further states that it has not knowledge or information sufficient to form a belief, and therefore denies the allegation contained in plaintiffs' petition that demand was mailed June 5, 1931, which was twenty-eight days prior to July 3, 1931; denies that plaintiff was entitled to the number of days between the time his demand was received by the Veterans Bureau and July 3, 1931, plus the number of days usually required to transmit mail from the Veterans Administration in Washington, D. C., to plaintiff's address, Rose Hill, Route 1, Kentucky, these days to count from and after March 15, 1932, the date of the letter transmitting denial. Defendant admits that plaintiffs' suit was filed on March 30, 1932, but denies that it brings the filing of the petition within the time allowed by Section 19, World War Veterans' Act, as amended July 3, 1930.

WHEREFORE, having fully answered plaintiffs' petition as amended herein, defendant prays that said petition be dismissed hence; further prays for its costs herein expended and for all necessary and proper relief.

MAC SWINFORD,
United States Attorney.

The affiant, Mac Swinford, says that he is United States Attorney for The Eastern District of Kentucky, and that statements contained in the foregoing answer are true as he verily believes.

MAC SWINFORD,
United States Attorney.

Subscribed and sworn to before me this 11 day of Jan., 1937.

A. B. ROUSE, Clerk,
By FLORENCE DUNHAM, D. C.

(SEAL)

**ORDER**—Entered and filed June 22, 1937.

Came the defendant, United States of America, by Mac Swinford, United States Attorney for the Eastern District of Kentucky, and produced and filed herein amended answer to petition and petition as amended, and the filing of same is now noted of record.

H. CHURCH FORD,
Judge.

**AMENDED ANSWER TO PETITION AND PETITION AS AMENDED—Filed June 22, 1937.**

Now comes the defendant, United States of America, by Mac Swinford, United States Attorney for the Eastern District of Kentucky, reiterating each and every allegation and denial contained in its original answer to the plaintiffs' petition and answer to the amended petition herein, the same as if copied word for word, except as changed and amended by this amendment, and states, having heretofore denied upon lack of information and belief the plaintiffs' receipt of said letter of March 18, 1932, now admits that it was received by the plaintiffs, as alleged in their amended petition, but denies that said letter was the letter of disagreement as alleged by the plaintiffs.

For further answer herein, the defendant states that on October 30, 1931, H. L. McCoy, Director of Insurance, Washington, D. C., mailed to the plaintiff, Henry Lawson, Route No. 1, Rose Hill, Kentucky, the following letter:

> "This is with further reference to the above entitled claim. You are informed that a decision has been rendered by the Insurance Claims Council to the effect that the evidence is not sufficient to establish as a fact that the former insured was totally and permanently disabled at a time when the contract of insurance was in force, and therefore the claim has been denied.
>
> "The claimant may appeal from the decision to the Administrator of Veterans' Affairs by giving notice in writing to this office within sixty days from date of this letter. If claim is not appealed within the time limit, the Council's decision will be referred for approval to the Administrator of Veterans Affairs."

Defendant further states that the plaintiffs failed to appeal from the decision of the Insurance Claims Council within the specified period of sixty days and that thereupon the foregoing letter became, was and is the final letter of denial and disagreement herein.

For further answer herein the defendant states that through error, mistake and inadvertence it admitted in its answer to plaintiffs' amended petition herein, that this suit was filed March 30, 1932, while in truth and in fact the petition was filed in the Clerk's office on March 30, 1932, but the defendant now states and avers that the said suit was not brought or commenced until September 29, 1932, when a copy of the plaintiffs' petition was served upon the United States Attorney for the Eastern District of Kentucky.

For further answer herein the defendant states and avers that the plaintiffs' cause of action herein accrued to them more than ninety days prior to the date of the filing of this suit and therefore pleads and relies upon the statute of limitations in such cases, made and provided as a bar to any recovery on account of the matters and things set forth in the petition and amended petition.

WHEREFORE, having fully answered plaintiffs' petition and amended petition herein, defendant prays as in its original answer to plaintiffs' petition and answer to amended petition.

MAC SWINFORD,
United States Attorney.

The affiant, Mac Swinford, says that he is United States Attorney for the Eastern District of Kentucky, and that the statements contained in the foregoing amended answer are true as he verily believes.

MAC SWINFORD,
United States Attorney.

Subscribed and sworn to before me this 22 day of June, 1937.

A. B. ROUSE, Clerk,
By F. H. DUNHAM, D. C.

(SEAL)

**ORDER**—Entered and filed June 12, 1939.

This day came the plaintiff, by counsel, and offered for filing an Amendment to the Petition, the Court being advised, it is ordered and the Amendment to the Petition be, and the same is now filed and noted of record.

H. CHURCH FORD,
Judge.

**AMENDMENT TO PETITION**—Filed June 12, 1939.

Plaintiffs, for amendment to the petition herein as amended, state that:

I.

The plaintiff Henry Lawson, is now deceased, and John A. Polin was appointed, on the 5th day of June, 1939, by the Washington County Court, Administrator of the Estate of said Henry Lawson; and said John A. Polin, as Administrator of the Estate of Henry Lawson, now adopts the allegations of the petition and amended petition heretofore filed, except as same may be changed by allegations of this amendment, and asks that this case

proceed in his name as Administrator of said Henry Lawson.

II.

Plaintiffs reiterate and adopt all of the allegations of the petition and amended petition filed herein, not inconsistent with the allegations made herein; and plaintiffs state further that Hobart Lawson served in the United States Army during the World War, and that he applied for and was granted War Risk term insurance in the sum of $10,000.00, effective February 2, 1918; and that said Hobart Lawson paid the insurance premiums upon the entire $10,000 00 of War Risk insurance as long as he remained in the Army and through the month of April, 1919, and said insurance remained in effect through May 31, 1919.

Plaintiffs state further that Hobart Lawson was wounded in service, and that the Bureau of War Risk Insurance, an agency of defendant in charge of insurance claims, has heretofore determined that Hobart Lawson was disabled from a compensable service connected disability beginning May 2, 1919, while said insurance was in force; and that said Hobart Lawson died on October 5, 1924; and that there was due to said Hobart Lawson from defendant, at the time of his death, unpaid disability compensation in the amount of $128.40; and that his death at that time revived and matured such part of said $10,000.00 of War Risk insurance as said unpaid compensation, as premiums, would have kept in effect, or about $3,500.00 of said insurance; and that Henry Lawson, as dependent father, became entitled under the designation made by said Hobart Lawson, and by reason of the provisions of Section 305 of the World War Veterans' Act to the monthly benefits from such part of said insurance as was received on October 5, 1924; and that benefits accrued upon said insurance during the life of said Henry Lawson, at the rate of approximately $20.13 per month for 150 months from October 5, 1924 to March 21, 1936, and that John A. Polin as Administrator of said Henry Lawson, is entitled now to the sum of $3,019.50 in such accrued benefits.

Plaintiffs state further that by reason of the provisions of Section 305 of the World War Veterans' Act, the widow of said Hobart Lawson, Pearlie Lawson, individually became entitled to the benefits of said revived insurance which accrued subsequent to the death of Henry Lawson; and that she is now personally entitled to benefits at the rate of $20.13 for each and every month since the 21st day of March, 1936, and will be entitled to the remainder of the benefits accruing under said insurance.

Plaintiffs state further that on the 5th day of June, 1931, said Henry Lawson, designated beneficiary, filed claim for benefits under said policy, and that it was denied by letter dated March 15, 1932, and that a disagreement exists as to claims for insurance benefits under said policy, including the claim for benefits on revived insurance from and after October 5, 1924.

WHEREFORE, plaintiffs pray for judgment for the accrued benefits under the revived insurance of Hobart Lawson in the sum of $3,019.50, in favor of John A. Polin, Administrator of Henry Lawson, and in the sum of $785.07 in favor of Pearlie Lawson, individually, and that reasonable counsel fees be allowed to their counsel herein.

BLAKEY HELM,
TRABUE, DOOLAN, HELM & HELM.
Counsel for Plaintiffs.

**ORDER**—Entered and filed July 11, 1939.

Came the defendant, United States of America, by John T. Metcalf, United States Attorney, and produced

and filed herein its Answer to Plaintiffs' Amended Complaint, and the filing of same is now ordered noted of record.

H. CHURCH FORD,
Judge.

**ANSWER TO PLAINTIFFS' AMENDED COMPLAINT—**
Filed July 11, 1939.

Now comes the defendant, United States of America, by John T. Metcalf, United States Attorney for the Eastern District of Kentucky, and answering plaintiffs' amended complaint:

I.

Denies for want of information and belief that John A. Polin was appointed on the 5th day of June, 1939, by the Washington County Court, administrator of the estate of Henry Lawson, and denies each and every other allegation of Paragraph 1 of the amended complaint.

II.

Admits that Hobart Lawson served in the United States Army during the World War and that he was granted War Risk Insurance in the sum of $10,000, effective February 2, 1918, on which premiums were paid as long as he remained in the Army, and that said Insurance remained in effect through May 31, 1919.

Denies that Hobart Lawson was wounded in the service; denies that the Bureau of War Risk Insurance

determined that Hobart Lawson was disabled from a compensable service connected disability—beginning May 2, 1919, while said insurance was in force; admits that said Hobart Lawson died on October 5, 1924, but denies that there was due to said Hobart Lawson from the defendant at the time of his death unpaid disability compensation in the sum of $128.40; denies that his death at that time revived and matured such part of said $10,000 War Risk Insurance as said unpaid compensation, as premiums, would have kept in effect, or about $3,500 of said insurance; denies that a disagreement exists as to the claim for insurance benefits under said policy, including the claim for benefits on revived insurance from and after October 5, 1924; denies each and every other allegation contained in Paragraph II of the amended complaint.

III.

Defendant denies each and every allegation contained in the amended complaint not herein specifically denied or admitted.

Wherefore, defendant prays that judgment be entered in its behalf and against the plaintiff, with costs.

JOHN T. METCALF,
United States Attorney.

**ORDER**—Entered and filed Nov. 28, 1939.

Came the parties hereto by counsel and produced and filed a stipulation of facts agreed upon by the parties by counsel, and the Court being advised, it is ordered

that said stipulation of facts be and it is hereby filed and noted of record;

Further ordered by the Court that this cause be now submitted for findings and judgment upon the facts as stipulated herein and upon briefs; and that the plaintiff is allowed thirty days from the date hereof in which to file his brief, and the defendant is allowed thirty days thereafter in which to file its reply brief.

H. CHURCH FORD.

Approved:

JOHN T. METCALF,
U. S. Attorney.

**STIPULATION OF FACTS**—Filed Nov. 28, 1939.

It is hereby stipulated and agreed by and between Blakey Helm, attorney for the plaintiffs, and John T. Metcalf, United States Attorney for the Eastern District of Kentucky and Erle McGuffey, attorney, Bureau of War Risk Litigation, attorneys for the United States of America as follows:

I.

That a trial by jury of the above entitled cause be, and the same is, hereby waived.

II.

That the plaintiffs, Pearlie Lawson, as administratrix of the estate of Hobart Lawson, and Henry Law-

son, as beneficiary, were at the time of the bringing of this action residents of the Eastern District of Kentucky.

III.

That the insured, Hobart Lawson, entered the military service of the United States on May 9, 1917, and was honorably discharged therefrom on May 1, 1919.

IV.

That while in the said service the insured applied for and was granted a contract of yearly renewable term insurance in the sum of $10,000, in which he designated his father, Henry Lawson, as beneficiary, and on which payments were last paid to include the month of May, 1919.

V.

That on March 4, 1920, the insured filed in the Bureau of War Risk Insurance a claim (Form 526) for disability of compensation; that thereafter the insured's disability was rated by the said Bureau and its predecessors in office under the dates indicated below as follows:

March 29, 1920:

Temporary partial, 20% (twenty per cent) from date of discharge. Contracted in the service.

July 29, 1920:

Temporary partial 20% (twenty per cent) from date of discharge to July 12, 1920.
Temporary partial 10% (ten per cent) from July 12, 1920, pending examination. Contracted in service.

April 8, 1921:

Surgical: Temporary partial 20% (twenty per cent) from date of discharge to July 12, 1920.
Temporary partial 10% (ten per cent) from July 12, 1920. Contracted in service. Gunshot wound Shoulder.

October 12, 1921:

Surgical: Temporary partial 10% (ten per cent) from 7-12-20 continued. Incident to service (Gunshot wound in shoulder).

May 26, 1922:

Rating of 10-12-21 confirmed and continued: Surgical Rating: Temporary partial 10% (ten per cent) from 7-12-20 continued. Incident to service. (Gunshot wound in shoulder.

February 15, 1924:

Surgical Rating: Temporary partial 10% from discharge to 1-24-24. Incident to service. (Gunshot wound left shoulder).

April 9, 1924:

Rating of February 15, 1924, confirmed and continued.
Surgical: Temporary partial 10% from discharge to Jan 24, 1924.
Permanent partial 10% from Jan. 24, 1924, due to service (Gunshot wound left shoulder.)

July 21, 1924:

Tuberculosis. No disability shown from date of discharge to 6-10-24.
Temporary partial 75% from 6-11-24. Incident to service (Pulmonary tuberculosis, moderately advanced active). Held as incurred in or aggravated by service under the provisions of Public 242, 68th Congress.
Surgical: Temporary partial 10% from discharge to 1-24-24.
Permanent partial 10% from 1-24-24. Incident to service.
Combined: Temporary partial 10% from date of discharge to 1-24-24.
Permanent partial 10% from 1-24-24 to 6-10-24.
Temporary partial 77% from 6-11-24. Incident to service.

August 2, 1924:

Rating of 7-21-24 is corrected to read: Tuberculosis. No disability shown from date of discharge to 6-10-24.
Temporary partial 75% from 6-11-24. Incident to service. Held as incurred in or aggravated by service under the provisions of Public No. 242, 68th Congress. (Pulmonary tuberculosis, moderately advanced active).
Surgical: Temporary partial 10% from date of discharge to 1-24-24.
Permanent partial 10% from 1-24-24. Incident to service. (Gunshot wound left shoulder.)
Combined: Temporary partial 10% from discharge to 1-24-24.
Permanent partial 10% from 1-24-24 to 6-10-24.
Temporary partial 78% from 6-11-24. Due to service.

March 6, 1925:

Tuberculosis: Amending rating of 8-2-24. No disability is shown from date of separation from active service to 6-10-24.
Permanent and total under Reg. 73 on and after 6-10-24 to 10-5-24 (date of death).
Pulmonary tuberculosis, chronic, active, advanced with cavitation.
Service connected under Section 200, World War Veterans' Act 1924.
Opinion as to service connection and permanent and total based upon examination of 6-10-24.
Approved under Reg. 86.
Cause of death. Pulmonary tuberculosis, chronic. Service connected.
Surgical: Temporary partial 10% from date of separation from active service to 1-24-24.
Permanent partial 10% from 1-24-24.
Gunshot wound, left shoulder. Service origin.
Not due to or incident to service. Chronic appendicitis.
Combined. Temporary partial 10% from date of separation from active service to 1-24-24.

Permanent partial 10% from 1-24-24 to 6-10-24. Permanent and total (under Reg. 73) from 6-10-24 to 10-5-24 (date of death.)

VI.

That the insured died intestate on October 5, 1924; that, on October 14, 1924, Pearlie Lawson was appointed administratrix of the estate by the Mercer County Court, State of Kentucky, and is now acting in that capacity; that Henry Lawson, the designated beneficiary, died intestate on March 21, 1936; the certificate of the Bureau of Vital Statistics, State of Kentucky, of the death of Henry Lawson is filed herewith and made a part hereof; that John A. Polin was appointed as administrator of his estate by the Washington County Court, State of Kentucky, on June 5, 1939, and is now acting in that capacity; that an attested copy of the order of appointment and qualification of said administrator is filed herewith and made a part hereof.

VII.

That on June 9, 1931, Henry Lawson, the designated beneficiary, filed in the Veterans' Administration a claim for insurance benefits alleging permanent and total disability of the insured from date of discharge, and demanded administrative payment thereof; that the Insurance Claims Council of the Veterans' Administration on October 27, 1931, rendered a decision that the insured, for insurance purposes, was not permanently and totally disabled as alleged but that he was so disabled from June 10, 1924, and it is agreed that the insured became permanently and totally disabled for insurance purposes on June 10, 1924; that Henry Lawson was notified by letter dated October 30, 1931, from H. L. McCoy, Director of Insurance, of the decision of the Insurance Claims Council and further informed that, "The claimant may appeal from the decision to the Administrator of Veterans' Affairs by giving notice in writing to this office within sixty days from date of this letter. If claim is not appealed within the time limit, the Council's decision will be referred for approval to the Adminis-

trator of Veterans Affairs''; that under date of March 5, 1932, Bacon R. Moore, the original attorney for plaintiffs, addressed a communication to the Veterans' Administration, which was received on March 8, 1932, requesting to be advised whether the Administrator had approved the decision of the Insurance Claims Council so that suit could be filed; that, Henry Lawson, was notified by letter dated March 15, 1932, from H. L. McCoy, Director of Insurance, that the Insurance Claims Council rendered a decision on October 27, 1931, to the effect that the evidence was not sufficient to establish as a fact that the insured was totally and permanently disabled at a time when the contract of insurance was in force and that, therefore, the claim had been denied, that such denial may be considered final for the purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended, and that if he accepted the denial of the claim by the Council as final the suspension of the statute of limitations provided by Section 19, *supra*, shall cease from and after the date of the said letter; that no other claim for insurance benefits of any character was or has been filed in the Veterans' Administration or its predecessor agencies; that this action was commenced on March 30, 1932, alleging that the insured became permanently and totally disabled while his said insurance contract was in force and that the plaintiffs were entitled to recover the whole amount thereof; that thereafter and on June 12, 1939, an amended complaint was filed alleging the revival of insurance under Section 305, World War Veterans' Act, 1924, as amended, by reason of the death of the insured on October 5, 1924.

VIII.

That the Veterans' Administration has determined and it is a fact that on June 10, 1924, the date of permanent and total disability of the insured for insurance purposes, there was no uncollected compensation available to revive insurance under Section 305, *supra;* that the Veterans' Administration has determined and it is a fact, that by virtue of the rating decision of March 6, 1925, set forth in Paragraph V, *supra*, there was uncol-

lected compensation due the insured on the date of his death in the sum of $128.40, which amount in its entirety accrued subsequent to June 10, 1924, the date of permament and total disability of the insured.

IX.

That none of the disability compensation payable by virtue of the rating decisions set forth in Paragraph V, *supra*, except the additional amount authorized by the rating decision of March 6, 1925, totaling $128.40 payable wholly for the period from June 10, 1924 to October 5, 1924, remained uncollected upon the date of death of the insured.

X.

That there is attached hereto and made a part hereof, a photostatic copy of an original communication, dated August 28, 1939, from Frank T. Hines, Administrator of Veterans' Affairs, to the Director, Bureau of War Risk Litigation, Department of Justice, setting forth the administrative practice of the Veterans' Administration and its predecessors, relating to the question whether lapsed yearly renewable term insurance may be revived and matured under the provisions of Section 305, *supra*, upon the death of the insured by uncollected disability compensation accruing wholly after the date of permanent and total disability of the insured for insurance purposes; and it is stipulated and agreed that the attached copy of the communication of August 28, 1939, contains a correct statement of the administrative practice in this respect.

In witness whereof the parties hereto, by their respective counsel, have hereunto subscribed their names, this 27 day of November, 1939.

BLAKEY HELM,
Attorney for Plaintiff.

JOHN T. METCALF,
United States Attorney.

ERLE McGUFFEY,
Attorney, Bureau of War Risk Litigation.

Seal

**VETERANS ADMINISTRATION**—Filed Nov. 28, 1939.

Office of
The Administration of
Veterans Affairs.

Washington.
August 28, 1939.

Honorable Julius C. Martin,
Director of Bureau War Risk Litigation,
Department of Justice,
Washington, D. C.

Lawson, Hobart
XC-343,036

My dear Mr. Martin:

I have your letter of August 5, 1939 in which you stated that it was your understanding that the Veterans' Administration's practice has been consistent with an administrative interpretation that the law prohibits the application of disability compensation payable after the date of permanent total disability for insurance purposes to the revival of insurance under the provisions of Section 305 of the World War Veterans' Act, and requested that you be advised fully in regard to the administrative interpretation and practice in cases of this kind.

It has never been the practice of the Veterans' Administration, or its predecessors, to use disability compensation accruing between the date upon which the insured became permanently and totally disabled for insurance purposes and the date of death for the

purpose of payment of insurance under the provisions of Section 305 of the World War Veterans' Act. Bulletin No. 1 issued by the Director of the Bureau of War Risk Insurance in the Treasury Department on October 15, 1917, pursuant to the provisions of Section 402 of An Act to Amend an Act to Authorize the Establishment of a Bureau of War Risk Insurance in the Treasury Department, which in part established the terms of the contract of insurance, provided in part as follows:

> "Insurance will be issued for any of the following aggregate amounts upon any one life * * * which installments will be payable during the total and permanent disability of the insured, or if death occur without such disability, for two hundred and forty months, or if death occur following such disability, for a sufficient number of months to make two hundred and forty in all, including months of disability already paid for, in both cases except as otherwise provided."

Noted 8/30/39
DW

XC-343,036

Honorable Julius C. Martin

It has always been the position of the Bureau of War Risk Insurance and the Veterans' Administration that the rights under a contract of insurance which matured by reason of permanent total disability for insurance purposes became fixed on the date of maturity, that is, the date of permanent and total disability for insurance purposes. This question arose in connection with the amendment of July 2, 1926 to Section 305, which provides that insurance hereafter revived shall be paid only to the insured, his widow, child or children, dependent mother or father, and in the order named, unless otherwise designated by the insured during his lifetime or by last will and testament. Under this amendment it became necessary to determine under what circumstances insurance should be paid only to the restricted class of beneficiaries as insurance hereafter revived. This question was considered by the Attorney General and in an opinion of June 22, 1927 he stated:

> "I agree with the conclusion of the General Counsel of the Bureau that the revival takes place upon the occurrence of the death or permanent total disability, and not when the Director decides that the insurance is again in effect, or pays the first installment."

It was further held that upon the happening of the events prescribed by the statute as necessary to effect revival of the insurance, including the event of death or permanent total disability for insurance purposes, the rights of the insured or of the beneficiaries became fixed. Upon the basis of this option, in those cases in which the insured became permanently and totally disabled for insurance purposes prior to July 2, 1926, insurance revived under Section 305 was paid without reference to the restricted class of beneficiaries set forth in the amendment of that date, even though the death of the veteran occurred subsequent to the amendment.

XC-343,036

Honorable Julius C. Martin

The view that the rights under Section 305 were fixed as of the date of permanent total disability for insurance purposes was affirmed by the Comptroller General in opinion of April 5, 1928 in connection with the claim of Hardin Neal Cox, C-1,092,208. This veteran had compensation due him at the time he became permanently and totally disabled for insurance purposes, but received payment of the compensation prior to his death. The Comptroller General held:

> "That the subsequent collection by a soldier of all compensation which was uncollected at the time of his permanent and total disability does not operate to defeat the provisions of Section 408 of the War Risk Insurance Act as amended (42 Stat. 1525) which Section was reenacted as Section 305 of the World War Veterans' Act, 1924."

The question of the maturity date of insurance was also considered on numerous occasions in connection with the provisions of Section 17, Public No. 2, 73rd Congress. It was held by this office in the case of William

McGrath, XC-396,623, which served as a basis for Administrator's Decision 124, that the date of permanent total disability for insurance purposes was the date of maturity of the contract.

The United States Government Life Insurance policies issued by the Veterans' Administration provide as follows:

> "Upon due proof of the total permanent disability of the insured while this policy is in force, the monthly installments shall, except as hereinafter provided, be payable to the insured and continue to be so payable during total permanent disability so long as he lives, and payment of all premiums due after receipt of such proof during total permanent disability shall be waived."

The United States Circuit Court of Appeals, Fourth Circuit, in the case of United States of America, Appellant v. Sara A. Ellison, Administratrix of Personal Estate of Carl R. Ellison, Deceased, and Maude Johnson Ellison, Appellees, held as follows:

XC-343,036

Honorable Julius C. Martin

> "The finding by the court that insured was totally and permanently disabled at the time of the award, settles the rights of plaintiffs under the policy; for it matured when insured became totally and permanently disabled, if in force at that time, and no further payment of premiums was required."

It is, and has been the opinion and practice of the Bureau of War Risk Insurance and the Veterans' Administration that the insurance matures at the date of permanent and total disability for insurance purposes, and that if there is no date of permanent and total disability for insurance purposes, then at the date of death, and that no insurance could be revived under the provisions of Section 305 as of the date of death of an insured who had previously been permanently and totally disabled for insurance purposes, since any contract of insurance he might have had in force by reason of Section 305 or otherwise would have matured on the

date of permanent and total disability for insurance purposes, and the rights under the contract would have been fixed as of that date.

Very truly yours,

Frank T. Hines,
Administrator.

**COMMONWEALTH OF KENTUCKY—**
**Filed Nov. 28, 1939.**

**State Department of Health**
**BUREAU OF VITAL STATISTICS**
**Louisville, Ky.**

**No. 3160**

I, J. F. Blackerby, State Registrar of Vital Statistics, do hereby certify the following to be a true ... of the CERTIFICATE OF DEATH OF

1. PLACE OF DEATH

Henry Lawson

(...nty of Washington on file in THE BUREAU OF VITAL STATISTICS OF KENTUCKY Voti... Perryville, #7 Registration District No. 1428 File No. 9355 Incorporated Town Springfield Primary Regi... ...er No. 7770 Registered No. 1124 City.....No..... St. .....
(If death occurred in a hospital or institution, give its name instead of street and number)
Length of residence in city or town where death occurred.....yrs. .....mos. .....ds.
How long in U. S. If foreign birth.....yrs.....mos.....ds.

2. FULL NAME Henry Lawson

(a) Residence: No. .....St. .....Ward .....
(Usual place of abode) (If non-resident give city or town and ...

| PERSONAL AND STATISTICAL PARTICULARS | MEDICAL CERTIFICATE OF DEA... |
|---|---|
| 3. Sex. 4. Color or Race. 5. Single, Married. Widowed or Divorced (Write the word)<br>Male White Widower | 21. Date of Death. Mch. 21. 1936. |
| Widowed or Divorced (Write the word)<br>5a. If married, widowed, or divorced Husband of<br>(or) Wife of Sis Tyler Lawson. | 22. I Hereby Certify, That I attended dec... Mar. 18, 1936 to Mch. 20, 1936. I last saw h... Mar. 20, 1936, death is said to have occurred ... stated above, at ....m. The principal cause ... and related cause of importance in order of ... as follows<br>Influenza |
| 6. Date of Birth. July 27-1858. | |
| 7. Age Years 77 Months 7 Days 23 If less than 1 day hrs. or min. | Contributory cause of importance not related ... cipal cause:<br>*Interstetial* Nephritis<br>Name of operation.....Date of...<br>What test confirmed diagnosis.....<br>Was there an autopsy ..... |
| 8. Trade, profession, or particular kind of work done, as spinner, sawyer, bookkeeper, etc. Retired farmer.<br>9. Industry or business in which work was done, as silk mill, sawmill, bank, etc.....<br>10. Date, deceased last worked at this occupation (month and year) .....<br>11. Total time (years) spent in this occupation.... | 23. If death was due to external cause ... fill in also the following:<br>Accident, suicide, or homicide.....Date ... .....19..... Where did injury occur...<br>(Specify city or town, county, and st...<br>Specify whether injury occurred in industry, ... or in public place.<br>Manner of injury .....<br>Nature of injury ..... |
| 12. BIRTHPLACE. Mercer Co., Ky. | |
| FATHER—13. Name John Lawson.<br>14. BIRTHPLACE. Mercer Co., Ky. | 24. Was disease or injury in any way ... occupation of deceased.....<br>If so, specify .....<br>(Signed) D. M. Godley, M...<br>(Address) Perryville, Ky. |
| MOTHER—15. Maiden Name *Matherly.*<br>16. BIRTHPLACE. Mercer Co., Ky. | |
| 17. INFORMANT. Mrs. *Claylod* Bugg<br>(Address) Harrodsburg, Ky. | |
| 18. BURIAL, CREMATION, OR REMOVAL. Place Deep Creek Cem. Date Mch. 22, 1936. | |
| 19. UNDERTAKER. Alexander & Royalty.<br>(Address) Harrodsburg, Ky. | |
| 20. Filed April 2, 1936.<br>Elizabeth Loe, Registrar. | |

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the official seal to be affixed, at Louisville, Ky., this 17 day of November in the year of our Lord one thousand nine hundred and Thirty Nine.

J. F. BLACKERBY,
State Registrar.

WASHINGTON COUNTY COURT—Filed Nov. 28, 1939.
Called Term, June 5th, 1939.

On motion of Thomas Lawson, a son of Henry Lawson, deceased, who died intestate in and a resident of Washington County, Kentucky, on the 21st day of March, 1936, it is ordered by the Court that John A. Polin be, and he is hereby appointed Administrator of the estate of the said Henry Lawson, and the amount of his bond is fixed at One Hundred Dollars ($100.00).

Whereupon, came John A. Polin and accepted said Administratorship and qualified to act by taking oath and executing bond, conditioned according to law, with Joseph Polin as his surety, in the sum of One Hundred Dollars ($100.00), which bond is approved by the Court. A Copy—Attest:

JOHN M. SMOTHERS, Clerk
Washington County,
(Kentucky) Court,

By MAY CONWAY, D. C.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW—**
Filed June 28, 1940.

This cause coming on to be heard and trial by jury having been specifically waived by agreement of counsel and submitted to the Court on the pleadings, exhibits, a stipulation of facts with exhibits, all of which sets forth an agreed statement of the case as the evidence upon the question to be decided, and upon oral argument, and

the Court having considered all the evidence and heard the arguments of counsel, and being advised, makes the following Findings of Fact and Conclusions of Law:

**Findings of Fact.**

1. That the plaintiffs, Pearlie Lawson, as administratrix of the estate of Hobart Lawson, and Henry Lawson, as beneficiary, were at the time of the bringing of this action residents of the Eastern District of Kentucky.

2. That the insured, Hobart Lawson, entered the military service of the United States on May 9, 1917, and was honorably discharged therefrom on May 1, 1919.

3. That while in the said service the insured, Hobart Lawson, applied for and was granted a contract of yearly renewable term insurance in the sum of $10,000, in which he designated his father, Henry Lawson, as beneficiary; that said policy lapsed for nonpayment of the premium due June 1, 1919; that at the time it lapsed the insured was suffering from a compensable disability; that thereafter, to-wit, on March 6, 1925, it was found and determined that the insured became permanently and totally disabled for insurance purposes as of June 10, 1924; that on said date of permanent and total disability of the insured there was no uncollected compensation available to revive insurance under Section 305, World War Veterans' Act, as amended; that by virtue of the rating decision of the Veterans Administration on March 6, 1925, there was uncollected compensation due the insured on the date of his death on October 5, 1924, in the sum of $128.40, which amount in its entirety accrued subsequently to June 10, 1924, the date of permanent and total disability of the insured; that said amount of $128.40 for disability compensation remaining uncollected upon the date of the insured's death was payable wholly for the period from June 10, 1924, to October 5, 1924.

4. That the insured died intestate on October 5, 1924 and Pearlie Lawson was duly appointed administratrix of his estate and is now acting in that capacity; that Henry Lawson, the designated beneficiary, died

intestate on May 21, 1936, and that John A. Polin was duly appointed and qualified as administrator of the estate of said Henry Lawson and is now acting in such capacity.

5. That on June 9, 1931, Henry Lawson, the designated beneficiary, filed in the Veterans Administration a claim for insurance benefits, alleging permanent and total disability of the insured from date of discharge, and demanded administrative payment thereof; that the Insurance Claims Council on October 27, 1931, rendered a decision that the insured for insurance purposes was not permanently and totally disabled as alleged but that he was so disabled from June 10, 1924; that Henry Lawson was notified by letter dated October 30, 1931, from H. L. McCoy, Director of Insurance, of the decision of the Insurance Claims Council and further informed that "The claimant may appeal from the decision to the Administrator of Veterans Affairs by giving notice in writing to this office within 60 days from the date of this letter. If claim is not appealed within the time limit, the Council's decision will be referred for approval of the Administrator of Veterans Affairs;" that on March 5, 1932, Bacon R. Moore, the original attorney for the plaintiffs, addressed a communication to the Veterans Administration, which was received on March 8, 1932, requiring to be advised whether the Administrator had approved the decision of the Insurance Claims Council so that suit could be filed; that Henry Lawson was notified by letter dated March 15, 1932, from H. L. McCoy, Director of Insurance, that the Insurance Claims Council rendered a decision on October 27, 1931, to the effect that the evidence was not sufficient to establish as a fact that the insured was permanently and totally disabled at a time when the contract of insurance was in force and that therefore his claim had been denied, that such denial may be considered final for the purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended; that this action was commenced on March 30, 1932, alleging that the insured became permanently and totally disabled while said insurance contract was in force; that thereafter on the 12th day of June, 1939, an amended complaint was filed

alleging revival of the insurance under Section 305, World War Veterans' Act, 1924, as amended, by reason of the death of the insured on October 5, 1924.

6. That a disagreement as to plaintiffs' claim for insurance benefits herein against the defendant exists.

**Conclusions of Law.**

1. That the Court has jurisdiction of the parties and of the subject matter of this action.

2. That no insurance was revived when the insured became totally permanently disabled on June 10, 1924, because he was not then entitled to any uncollected compensation.

3. That the compensation in the amount of $128.40, which accrued subsequent to June 10, 1924, and which was due and payable to the insured at the time of his death on October 5, 1924, was applicable to revive insurance under the provisions of Section 305 of the World War Veterans' Act (38 U. S. C. 516).

4. That upon the death of the insured on October 5, 1924, a portion of his war risk term insurance which lapsed for nonpayment of the premium due on June 1, 1919, was revived in the amount which could have been kept in force by the application of $128.40 to the payment of premiums from June 1, 1919, to October 5, 1924, less the amount of such premiums with interest thereon, as provided by Section 305 of the World War Veterans' Act to October 5, 1924.

5. That John A. Polin, Administrator of the Estate of Henry Lawson, is entitled to 138 installments of the insurance revived upon the death of Hobart Lawson, for the period from October 5, 1924 to March 21, 1936, the date of the death of Henry Lawson.

6. That the plaintiff, Pearlie Lawson, Administratrix of the Estate of Hobart Lawson is entitled to the commuted value of 102 installments of insurance which had not accrued when Henry Lawson, the designated beneficiary, died on March 21, 1936.

7. That the attorneys for the plaintiff are entitled to a reasonable fee for their services herein.

H. CHURCH FORD,
Judge.

**JUDGMENT**—Entered and filed June 28, 1940.

This cause coming on for trial and trial by jury having been specifically waived by agreement of counsel, and having been submitted to the Court for Findings of Fact, Conclusions of Law, and Judgment, and the Court being advised,

IT IS NOW CONSIDERED, ORDERED, AND ADJUDGED that upon the death of the insured on October 5, 1924, a portion of his war risk term insurance which lapsed for nonpayment of premium due on June 1, 1919, was revived in the amount which could have been kept in force by the application of $128.40 to the payment of premiums from June 1, 1919, to October 5, 1924, less the amount of such premiums with interest thereon, as provided by Section 305 of the World War Veterans' Act, to October 5, 1924.

IT IS FURTHER ORDERED AND ADJUDGED by the Court that the plaintiff, John A. Polin, Administrator of the Estate of Henry Lawson, recover 138 installments, each in the sum of $16.50, of the insurance revived upon the death of Hobart Lawson, for the period from October 5, 1924, to March 21, 1936, or a total sum of $2,277.00.

IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff, Pearlie Lawson, Administratrix of the

Estate of Hobart Lawson, recover the sum of $1,462.00 the commuted value of the remaining 102 installments of insurance accrued after Henry Lawson, the designated beneficiary, died on March 21, 1936.

IT IS FURTHER ORDERED AND ADJUDGED that Blakey Helm, attorney for the plaintiffs, be paid 10 per cent of the amounts ordered paid by this judgment, to be deducted from the respective amounts paid to the plaintiff.

/S/ H. Church Ford,
Judge.

**ORDER**—Entered and filed Sept. 23, 1940.

Came the defendant, United States of America, by John T. Metcalf, United States Attorney for the Eastern District of Kentucky, and offered for filing his Notice of Appeal to the Circuit Court of Appeals for the Sixth Circuit, and the Court being advised, it is ordered that the said Notice of Appeal to the Circuit Court of Appeals for the Sixth Circuit be, and it is hereby filed and noted of record, and the defendant is given ninety days from the date hereof within which to file the record on appeal.

/S/ H. Church Ford,
Judge.

September 23, 1940.

**NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS**—Filed September 23, 1940.

Notice is hereby given that the defendant, United States of America, above named, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the final Judgment entered in this action on June 28, 1940.

JOHN T. METCALF,

United States Attorney, Eastern District of Kentucky, Attorney for Defendant, Lexington, Kentucky.

**ORDER**—Entered and filed Sept. 23, 1940.

Came the defendant, United States of America, by John T. Metcalf, United States Attorney for the Eastern District of Kentucky, and offered for filing Designation of Contents of Record on Appeal, and the Court being advised, it is ordered that said Designation of Contents of Record on Appeal be and the same is hereby filed and noted of record.

H. CHURCH FORD,

Judge.

September 23, 1940.

**DESIGNATION OF CONTENTS OF RECORD ON APPEAL—Filed September 23, 1940.**

The Clerk of this Court is requested to prepare, authenticate, and file in the office of the Clerk of the United States Circuit Court of Appeals, Sixth Circuit, a transcript of the record herein for use in the appeal of this case by the defendant herein, and appellant in the Circuit Court of Appeals, containing the following:

1. Petition, filed herein March 30, 1932.

2. Answer of United States of August 31, 1933.

3. Amended Petition of July 13, 1934.

4. Order filing Answer to Amended Petition, entered January 11, 1937.

5. Answer to Amended Petition of January 11, 1937.

6. Order filing Amended Answer to Petition and Petition as Amended, entered June 22, 1937.

7. Amended Answer of United States to Petition and Petition as Amended, of June 22, 1937.

8. Order filing an Amendment to the Petition, entered June 12, 1939.

9. Amendment to Petition, of June 12, 1939.

10. Order filing Answer of the United States to Plaintiffs' Amended Complaint, entered July 11, 1939.

11. Answer of United States to Plaintiffs' Amended Complaint of July 11, 1939.

12. Order filing Stipulation of Facts and submitting cause to Court for Findings and Judgment upon the facts as stipulated, entered November 28, 1939.

13. Stipulation of Facts, filed November 28, 1939, together with the three exhibits attached thereto.

14. Findings of Fact and Conclusions of Law, entered June 28, 1940.

15. Judgment, entered June 28, 1940.

16. Notice of Appeal.

17. Order filing Notice of Appeal.

18. Designation of Contents of Record on Appeal.

19. Order filing Designation of Contents of Record on Appeal.

JOHN T. METCALF,

United States Attorney, Eastern District of Kentucky, Attorney for Defendant.

## CERTIFICATE OF CLERK OF DISTRICT COURT.

United States of America, Eastern District of Kentucky, ss:

I, A. B. Rouse, Clerk of the United States District Court in and for the Eastern District of Kentucky, do hereby certify that the annexed and foregoing is a true and full copy of the original Record as per designation filed September 23, 1940 in the case of Pearlie Lawson, Administratrix of the estate of Hobart Lawson and Henry Lawson, beneficiary vs. United States of America,

No. U. S. 140—Lexington Docket, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Lexington this 30 day of October, A. D. 1940.

A. B. Rouse, Clerk.

(SEAL)

## PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

* * * * *

*Cause argued and submitted*

(January 10, 1942)

Before HICKS, ALLEN, and MCALLISTER, JJ.

This cause is argued by Wilbur C. Pickett for Appellant and by Blakey Helm for Appellees and is submitted to the court.

*Judgment*

(Entered January 12, 1942)

This cause was heard on the transcript of the record, briefs and arguments of counsel, and

On consideration whereof, it is here and now ordered and adjudged that the judgment appealed from be and the same is in all things affirmed upon the authority of American National Bank & Trust Co. of Chicago, Admr., etc. v. The United States of America, C. C. A. 7, decided December 13, 1941.

United States Circuit Court of Appeals for the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of United States of America vs. Pearlie Lawson, Admx. of the Estate of Hobart Lawson, Deceased, and John A. Polin, Administrator of the Estate of Henry Lawson, Beneficiary, Deceased. No. 8847. As the same remains upon the files and records of the said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 6th day of March, A. D. 1942.

J. W. MENZIES,
*Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.*

448809—42

U. S. GOVERNMENT PRINTING OFFICE: 1942